

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL ACTION NO. 5:23-CV-00003-KDB-DCK**

**ERIC KARCHMER,**

**Plaintiff,**

**v.**

**APPALACHIAN STATE  
UNIVERSITY, and SHERI  
EVERTS,**

**Defendants.**

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's Motion to Remand Amended Complaint to Watauga Superior Court ("Plaintiff's Motion to Remand") (Doc. No. 37), Defendants' Motion to Dismiss Amended Complaint and Petition for Judicial Review ("Defendants' Motion to Dismiss") (Doc. No. 38), the parties' associated briefs and exhibits, (Doc. Nos. 39-42), and the Magistrate Judge's Memorandum and Recommendation ("M&R") (Doc. No. 43), recommending that the Plaintiff's Motion to Remand be granted and Defendants' Motion to Dismiss be denied as moot. The parties have not filed an objection to the M&R, and the time for doing so has expired. Fed. R. Civ. P. 72(b)(2).

**I. BACKGROUND**

No party has objected to the Magistrate Judge's statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in the M&R. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised).

## **II. STANDARD OF REVIEW**

A district court may designate a magistrate judge to “submit to a judge of the court proposed findings of fact and recommendations for the disposition” of dispositive pretrial matters, including motions to dismiss. 28 U.S.C. § 636(b)(1). Any party may object to the magistrate judge's proposed findings and recommendations, and the court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). However, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” and need not give any explanation for adopting the M&R. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). Also, the Court does not perform a de novo review where a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). After reviewing the record, the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

## **III. DISCUSSION**

Having carefully reviewed the Magistrate Judge's M&R, the relevant portions of the record and applicable legal authority, this Court is satisfied that there is no clear error as to the M&R, to which no objection was made. *Diamond*, 416 F.3d at 315. Accordingly, this Court finds that it should adopt the findings and recommendations set forth in the M&R as its own

solely for the purpose of deciding these motions, that Plaintiff's Motion to Remand should be granted, and that Defendants' Motion to Dismiss should be denied as moot.

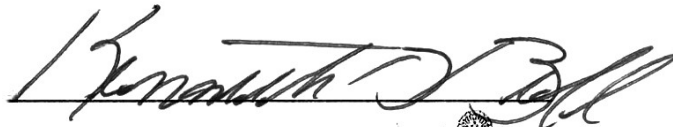
#### IV. ORDER

**IT IS, THEREFORE, ORDERED** that:

1. The Magistrate Judge's M&R, (Doc. No.43), is **ADOPTED**; and
2. Plaintiff's Motion, (Doc. No. 37), is **GRANTED**; and
3. Defendant's Motion, (Doc. No. 38), is **DENIED**; and

The Clerk is directed to close this matter in accordance with this Order.

Signed: October 12, 2023



Kenneth D. Bell  
United States District Judge

